

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) MARIA DEL ROSARIO CHICO VIETTI,)
Individually and as Parent and Next)
friend of A.R.V., P.F.V. and H.S.V.,)
minor children,)

Plaintiff,

V.

Case No.: 21-CV-58-JFH-CDL

(1) WELSH & MCGOUGH, PLLC; an Oklahoma Professional Limited Liability Corporation;

(2) CATHERINE WELSH, an individual;)
AND,)

(3) JAIME VOGT, LPC, an individual,)

Defendants.

ATTORNEY LIEN CLAIMED JURY TRIAL DEMANDED

**PLAINTIFF’S RESPONSE TO DEFENDANT JAIME VOGT’S
MOTION TO DISMISS AND NOTICE THAT THE MOTION
TO DISMISS IS MOOT**

COMES NOW the Plaintiff, by and through her attorneys of record, and in response to the motion to dismiss filed by Defendant Jaime Vogt on March 15, 2021 (the “Motion”) (Dkt. #15), respectfully shows the Court the same is moot as Plaintiff has filed an Amended Petition in this case:

1. On March 12, 2021, Plaintiff filed an amended petition (Dkt. #13) as a matter of course pursuant to Fed. R. Civ. Pro. 15(a).

2. On March 15, 2021, prior to receiving service of the amended petition, Defendant Vogt filed her Motion to Dismiss based on the allegations of Plaintiff's initial petition filed on February 23, 2021.

3. As a result of Plaintiff's Amended Petition, Defendant's Motion is moot. *See, e.g.,*

Mink v. Suthers, 482 F.3d 1244, 1254 (10th Cir. 2007) (amended complaint supersedes an original complaint and renders the original complaint without legal effect); *Courty v. Helmer.*, No. CIV-09-211-C, 2009 WL 0348418, *7 (W.D. Okla. Sept. 17, 2009) (denying as moot motion to dismiss filed prior to amended complaint); *Davis v. AHS Pawnee Hosp.*, No. CIV-07-723-CVE-SAJ, 2009 WL 5234639, *1 (N.D. Okla. Dec. 15, 2008) (same) (motion to dismiss filed prior to amendment “is without legal effect”); *see also Edwards v. Andrews, et al.*, 1982 OK 72, 650 P.2d 857, 859 (amended petition constitutes abandonment of original petition); Order by J. Nightingale in *Morony v. New Cingular Wireless PCS, LLC*, Tulsa County District Court case number CJ-2015-2632 dated 7/14/16, 2016 WL 4159076, *1 (defendant’s dispositive motion rendered moot by plaintiff’s amended petition).

4. Because Plaintiff has filed an Amended Petition, Defendant’s Motion addresses a pleading that no longer has legal effect and is therefore moot.

WHEREFORE, premises considered, Plaintiff respectfully requests the Court deny Defendant’s Motion to Dismiss as moot.

Respectfully submitted,

SMOLEN | LAW, PLLC

/s/ Dustin J. Vanderhoof

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March, 2021, the above and foregoing was submitted to the Clerk of Court using the ECF System for filing and for transmittal of a Notice of Electronic Filing to all counsel who have appeared in this case.

/s/Dustin J. Vanderhoof